

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SUN OPTICS, INC., a Utah Corporation,

Plaintiff,

v.

FGX INTERNATIONAL, INC., a Delaware
Corporation,

Defendant.

Civil Action No. 1:07cv137 SLR

**PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION ON
DEFENDANT'S NEW ACCUSED PRODUCTS**

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OF COUNSEL

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DATE: October 26, 2007

Sun Optics, Inc. ("Sun Optics") hereby moves the Court for an order preliminarily enjoining Defendant FGX International, Inc. ("FGX") from making, using, selling, offering to sell or importing displays for reading glasses that FGX currently uses in CVS drugstores ("CVS displays"), or colorable imitations thereof, which displays market reading glasses in cases displayed in a substantially vertical position, wherein the cases allow a consumer to view a portion of the reading glasses inside the cases. The basis for this Motion is that the CVS displays infringe at least claim 1 of U.S. Patent No. 7,188,739 (the "'739 patent"), and these infringing displays are causing substantial irreparable harm to Sun Optics, the holder of the '739 patent.

As shown by the accompanying memorandum in support of this motion, supporting declaration, and exhibits thereto, Sun Optics has made the requisite showing for the granting of a preliminary injunction. Namely, Sun Optics has shown: (1) a reasonable likelihood of success on the merits of its claims of infringement by the CVS displays, (2) Sun Optics is suffering irreparable harm due to the infringing CVS displays, (3) the balance of the parties' hardships is in favor of an injunction, and (4) the issuance of an injunction during the pendency of this action will further the public's interest of upholding the patent system and of fostering competition in the reading glasses market. Accordingly, Sun Optics respectfully requests that this Motion should be granted and that FGX be enjoined from making, using, or selling its CVS displays, or colorable imitations thereof, during the pendency of this action.

Filed simultaneously herewith are: (1) a Memorandum in Support of Plaintiff's Motion for Preliminary Injunction on Defendant's New Accused Products; and (2) the Declaration of Bruce Raile.

A proposed Order is also submitted herewith.

Respectfully submitted this 26th day of October, 2007.

CONNOLLY BOVE LODGE & HUTZ

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Attorneys for Plaintiff
Sun Optics, Inc.

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CERTIFICATE OF SERVICE

I, R. Eric Hutz, hereby certify that on October 26, 2007 I caused to be electronically filed a true and correct copy of the foregoing with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record.

Donald J. Detweiler, Esquire (I.D. 3087)
Sandra G. M. Selzer, Esquire (I.D. 4283)
GREENBERG TRAURIG, LLP
The Nemours Building
1007 North Orange Street
Suite 1200
Wilmington, DE 19801
Attorneys for defendant
FGX International, Inc.

I further certify that on October 26, 2007, I caused a copy of the foregoing to be served by hand delivery on the above-listed counsel of record.

/s/ R. Eric Hutz
R. Eric Hutz (#2702)

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**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION ON DEFENDANT'S
NEW ACCUSED PRODUCTS**

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The Court, having considered Plaintiff Sun Optics, Inc.'s ("Sun Optics") Motion for Preliminary Injunction on Defendant's New Accused Products, and for good cause appearing therefore, Plaintiff Sun Optics's Motion for a Preliminary Injunction is GRANTED. The Court's Findings of Fact and Conclusions of Law are as Follows:

1. Defendant FGX International, Inc. ("FGX" or "Defendant") has made, used, sold, offered to sell, or imported, in or into the United States products referred to by the parties as the "CVS displays," that are accused of infringing claim 1 of U.S. Patent No. 7,188,739 (the "'739 patent");
2. Sun Optics has shown a reasonable likelihood of success on the merits of its claims, based upon its showing that the CVS displays likely infringe claim 1 of '739 patent as the properly construed, and FGX has failed to raise a substantial question of invalidity or unenforceability of claim 1 of the '739 patent;
3. Sun Optics has established that it will be irreparably harmed if FGX continues to infringe the claims of the '739 patent pending the outcome of this litigation;
4. Sun Optics has shown that the balance of the parties' respective hardships favors the granting of a preliminary injunction; and
5. The public's interests in upholding the patent system and encouraging competition will be furthered by granting Sun Optics's motion for a preliminary injunction.

IT IS HEREBY ORDERED:

1. That FGX, its officers, agents, servants, employees, attorneys, and any persons acting in active concert or participation with them who receive actual notice of

this order by personal service or otherwise shall not make, use, sell, offer to sell, or import, in or into the United States, the CVS displays, or any colorable imitation thereof, pending conclusion of this litigation on the merits; and

2. FGX shall within one week of this Order recall all such CVS displays, or colorable imitations thereof, from all retailers that carry these products; and
3. FGX shall within one week of this Order inform each of its customers in the United States to which it has distributed CVS displays, or colorable imitations thereof, of the present preliminary injunction precluding the manufacture, use, sale, and offer to sell or importing, in or into the United States, of these products.

DATED this ____ day of _____, 2007

BY THE COURT

By _____

Hon. Chief Judge Sue L. Robinson

United States District Court Judge

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STATEMENT PURSUANT TO LOCAL RULE 7.1.1

I, R. Eric Hutz, Esq., an attorney for plaintiff, hereby state that the parties attempted to reach an agreement on the matters set forth in PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION ON DEFENDANT'S NEW ACCUSED PRODUCTS. Specifically, on October 22, 2007, Chad E. Nydegger, Esq., wrote Adam Landa, Esq., and sought defendant's consent to the relief sought in the motion. Mr. Landa advised Mr. Nydegger by letter dated that same day that defendant would not consent.

Date: October 26, 2007

/s/ R. Eric Hutz
R. Eric Hutz (#2702)

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